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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Equal Access and Interconnection) CC Docket No. 94-54
Obligations Pertaining to) RM-8012
Commercial Mobile Radio Services)

REPLY COMMENTS OF GTE SERVICE CORPORATION

GTE SERVICE CORPORATION
ON BEHALF OF ITS
TELEPHONE AND PERSONAL
COMMUNICATIONS COMPANIES

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SUMMARY

The decision with which the Commission is now faced--whether or not Equal Access should be imposed on non-RBOC cellular carriers--could fundamentally alter the manner in which cellular service is provided in the United States. The record demonstrates that Equal Access is a policy that should not be extended further into the cellular industry. The evidence shows that cellular carriers: 1) do not control bottleneck facilities; 2) compete for cellular customers; and 3) will be faced with even greater competition from the entry of PCS and wide-area SMR carriers. Cellular subscribers that do not have Equal Access do not demand it and, according to Southwestern Bell, those that do have it do not value it. Further, cellular subscribers have the ability to easily select the IXC of their choice through alternative dialing plans.

While the benefits of Equal Access prove elusive, commenters have documented the substantial costs to the public, carriers, and the Commission. A decision to impose Equal Access would only benefit the IXCs, as they would reap the advantage of increased traffic--traffic that was previously toll-free through wide cellular toll-free calling areas. Conversely, cellular subscribers would be the losers, as they would have to pay IXCs to carry their previously toll-free calls.

Nor can the imposition of Equal Access be justified under the guise of 'parity.' GTE believes that the Commission's analysis in its Order approving the AT&T/McCaw merger should be controlling here. In the AT&T/McCaw Order, the Commission rejected 'parity for parity's sake,' and refused to utilize the MFJ as a basis for imposing regulatory restraints. The MFJ obligations placed on the RBOC cellular carriers should not form the basis for the manner in which the rest of the cellular industry must operate, especially when parity would be achieved at the expense of wide toll-free calling areas, which directly benefit the end user. Instead, GTE supports the removal of Equal Access requirements from RBOC cellular carriers.

In this proceeding, the Commission requested and received comment on a host of interconnection issues. The record resoundingly demonstrates that wireless carriers, LECs, RBOCs, and IXCs agree that good faith negotiation of interconnection arrangements has worked well and is superior to the alternative of mandatory tariffs. Significant support also exists for GTE's position that "most favored terms" clauses would be unnecessary and could spawn litigation. In addition, several commenters concurred with GTE's assessment that a requirement that LEC-CMRS interconnection contracts be filed with the Commission would be unwarranted and burdensome.

On the basis of the record, GTE urges the Commission to refrain from developing CMRS-CMRS interconnection policies at

this point in time. Such interconnection requirements would be premature and would retard the development of new wireless services. In addition, given the chimerical nature of the resellers' plans to connect to cellular switches and the lack of any public benefit from such an arrangement, the Commission should not mandate direct reseller interconnection to cellular switches.

Both the record, and GTE, firmly support extending cellular resale obligations to all CMRS carriers. However, the Commission should not extend resale obligations to ATG service due to its technical infeasibility in the ATG environment, and the competitive nature of ATG service.

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REPLY COMMENTS OF GTE SERVICE CORPORATION

I. Introduction

GTE Service Corporation ("GTE") hereby submits its reply comments in the above-captioned proceeding concerning Equal Access and interconnection obligations for CMRS providers.¹ In its initial comments, GTE opposed the imposition of Equal Access on cellular carriers and air-to-ground ("ATG") providers. GTE supported retention of the FCC's policy of allowing local exchange carriers ("LECs") and CMRS providers to negotiate interconnection arrangements, opposed mandated CMRS interconnection, and favored the extension of resale obligations to all CMRS providers except ATG carriers. See Comments of GTE Service Corp. The record before the

¹ See Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services (Notice of Proposed Rule Making and Notice of Inquiry), CC Docket No. 94-54, RM-8012 (FCC 94-145) (July 1, 1994) [hereinafter NPRM/NOI].

Commission establishes that these positions are in the public interest.

II. The Factual Record Developed in the Comments Confirms that Equal Access Is Not Warranted for Cellular Carriers

While the Commission tentatively concluded in the NPRM/NOI that "in principle" imposing Equal Access obligations was in the public interest, the record developed in the comments to this proceeding overwhelmingly shows that imposing Equal Access obligations on cellular carriers is not warranted. Nearly all commenters filing on behalf of cellular carriers in this proceeding opposed the imposition of Equal Access on independent cellular carriers.² Most of the

² Comments of AirTouch Communications ("AirTouch") at 3; Comments of ALLTEL Mobile Communications, Inc. ("ALLTEL") at 2; Comments of Americell PA-3 Limited Partnership ("Americell") at 1; Comments of Michael B. Azeez, d/b/a/ Durango Cellular Telephone Co., Ohio State Cellular Phone Co., and Trillium Cellular Corp. ("Azeez"), at 2; Comments of Century Cellunet, Inc. ("Century") at 2; Comments of Comcast Corp. ("Comcast") at iii; Comments of Dakota Cellular, Inc. ("Dakota") at 1; Comments of First Cellular of Maryland, Inc. ("First Cellular") at 1; Comments of Florida Cellular RSA Limited Partnership ("Florida") at 2; Comments of GTE ("GTE") at 1; Comments of Highland Cellular, Inc. ("Highland") at 2; Comments of Horizon Cellular Telephone Co. ("Horizon") at 1; Comments of Lake Huron Cellular Corp. ("Lake Huron") at 1; Comments of Miscellco Communications, Inc. ("Miscellco") at 2; Comments of New Par ("New Par") at 2; Comments of Pacific Telecom Cellular, Inc. ("PTC") at 1; Comments of Palmer Communications Inc. ("Palmer") at 1; Comments of Point Communications Co. ("Point") at 2; Comments of Saco River Cellular Telephone Co. ("Saco") at 2; Comments of Sagir, Inc. ("Sagir") at 1; Comments of Southwestern Bell Corp. ("SWB") at iii; Comments of SNET Mobility, Inc. ("SNET") at 5; Comments of Telephone and Data Systems, Inc. ("TDS") at 1; Comments of Triad Cellular ("Triad") at 1; Comments of Union Telephone Company, Inc. ("Union") at 2; Comments of Vanguard Cellular Systems, Inc. ("Vanguard") at 1; Comments of Western Wireless Corp. ("Western") at 2.

cellular carriers affiliated with Regional Bell Operating Companies ("RBOCs") contend that no cellular carrier should be subject to Equal Access, and consequently support elimination of their MFJ requirement to provide Equal Access.³ Notably, Southwestern Bell Mobile Systems, Inc. ("SWB"), an RBOC cellular affiliate, and two other cellular carriers that were until recently affiliated with an RBOC, AirTouch Communications ("AirTouch") and New Par,⁴ ask that the Commission refrain from imposing Equal Access on the independent cellular carriers.⁵

Cellular carriers that have had years of first-hand experience with Equal Access have found that consumers have not demanded Equal Access.⁶ For example, the survey submitted by Southwestern Bell Mobile Systems shows that by a substantial majority, customers preferred to have their cellular carrier provide them with long distance service. In

³ See Comments of Bell Atlantic at 4; Comments of BellSouth at 31; Comments of NYNEX at 4; Comments of Pacific Bell ("Pac Bell") at 3; SWB at iii. Of these five carriers, only SWB unconditionally opposes the extension of Equal Access to independent cellular carriers.

⁴ Until April 1994, AirTouch was affiliated with Pacific Telesis Group. AirTouch at 1. New Par was similarly affiliated with Pacific Telesis Group until recently. New Par at 1-2.

⁵ AirTouch at 3-4; New Par at 1-2; SWB at iii. Southwestern Bell is required to provide Equal Access pursuant to the Modified Final Judgment ("MFJ"). SWB at 12. AirTouch has chosen to provide Equal Access to retain a minority of its customers. AirTouch at 5. See also New Par at 2-3.

⁶ See AirTouch at 2; SWB at 31.

fact, customer choice of long distance carrier was the least important option chosen in the survey.⁷ Other anecdotal evidence submitted by ALLTEL and Century confirms that for the most part, customers have not sought Equal Access and are not dissatisfied by the absence of Equal Access.⁸

Moreover, the record confirms that Equal Access would be contrary to the public interest because it could reduce the aspect of cellular service that customers value most highly--the size and scope of the cellular toll-free calling area. Overwhelmingly, by a nearly ten to one margin, customers in SWB's survey said that a "large calling area" was the most important aspect of their cellular service.⁹ Wide cellular toll-free calling areas currently provide substantial savings in toll charges and are a natural outgrowth of wireless service. To accommodate significant customer demand, cellular carriers have expanded their cellular calling areas. An Equal Access policy would divert toll-free cellular calls to the interexchange ("IXC") network.

A consensus also exists among commenters that the requisite underpinnings of Equal Access do not exist in the cellular industry. As GTE stated in its comments, in order to

⁷ SWB at 32-33.

⁸ ALLTEL at 6; Century at 10-11; see also AirTouch at 18; Americell at 4; Comcast at 27-28; CTIA at 11; Dakota at 4; First Cellular at 4; Florida at 2; Highland at 2; Lake Huron at 4; Miscellco at 8; Palmer at 7-8; Saco at 4; Sagir at 4; Union at 2; Western at 3.

⁹ SWB at 35.

impose Equal Access, there must a finding that cellular carriers block end user access to IXCs; that the cellular industry is not competitive; that cellular carriers control bottleneck facilities; and that the benefits of Equal Access outweigh the costs.¹⁰ However, the record establishes that cellular subscribers have the ability to access their IXCs of choice today;¹¹ the cellular marketplace is vibrantly competitive,¹² and the marketplace will be even more competitive with the emergence of PCS and wide-area SMR providers;¹³ cellular carriers do not control bottleneck facilities;¹⁴ and the costs of Equal Access greatly outweigh

¹⁰ GTE at 4-6; 7; 15-19; 22-28.

¹¹ See, e.g., Century at 7; Comments of the Cellular Telecommunications Industry Association, ("CTIA") at 10; Miscellco at 8, n.13; Vanguard at 8, n.22; Western at 3.

¹² See, e.g., AirTouch at 7; Comments of American Mobile Telecommunications Association, Inc. ("AMTA") at 5; Bell Atlantic at 9; Century at 10-11; CTIA at 9; Declaration of Bruce M. Owen (attached to Comments of McCaw) [hereinafter "Owen Declaration" or "Owen"]; Horizon at 2; Miscellco at 7; Comments of the National Telephone Cooperative Association ("NTCA") at 4-5; NYNEX at 6; Comments of the Rural Cellular Association ("Rural") at 4-5.

¹³ See, e.g., AirTouch at 5, 7; ALLTEL at 6; Americell at 2; AT&T at 8; Century at 14; Comcast at 25; CTIA at 11; Dakota at 2; First Cellular at 2; Horizon at 2; Lake Huron at 2; McCaw at 7; New Par at 3, 5; NTCA at 4; NYNEX at 5; Comments of OneComm Corporation ("OneComm") at 5, 9; Palmer at 8; Rural at 4; Sagir at 2; SNET at 11; SWB at 14-15, 21, 22; TDS at 10; Triad at 4; Vanguard at 7-8.

¹⁴ See, e.g., AirTouch at 6-7; ALLTEL at 3, 4, 7; AMTA at 5; CTIA at 4; McCaw at 5; Comments of Nextel Communications, Inc. ("Nextel") at 6; New Par at 4-5; Rural at 5; Saco at 3; SWB at 16; Triad at 3. See also Century at 12.

any perceived benefits.¹⁵ Thus, the tentative conclusion of the NPRM/NOI cannot be supported.

It is clear from the record in this proceeding that the interest served by the proposed Equal Access policy would not be the public's interest but the IXCs' interests. It is particularly significant that while the IXCs tout the Equal Access policy as pro-competitive, experience has shown that the public has not benefited from Equal Access in those locations where Equal Access already has been imposed. For example, as NYNEX states, IXCs have not generally offered NYNEX cellular customers special calling plans in the ten years that Equal Access has been available in their serving area.¹⁶ The record in this proceeding significantly lacks evidence that the public has benefited from Equal Access that

¹⁵ Equal Access currently imposes staggering costs on the public. See Affidavit of Professor Jerry A. Hausman (filed with the Comments of SWB). Professor Hausman estimates that Equal Access costs consumers \$900 million each year. Id. at 3. See Part II, Section F, Subsection 2, infra, for a more detailed discussion.

Equal Access would also pose substantial implementation costs; see, e.g., AirTouch at 17; Century at 4-7; Comcast at 38-39; Horizon at 4; Miscellco at 5; Comments of National Association of Business and Educational Radio, Inc. ("NABER") at 6-7; New Par at 10-11; Palmer at 4-5; Rural at 6-7; TDS at 3-7; Triad at 6-7. The benefits of Equal Access are either illusory or outweighed by the costs. See, e.g., ALLTEL at 6; Americell at 3; Century at 4-12; Comcast at 33-41; Dakota at 3; First Cellular at 3; Lake Huron at 3; Miscellco at 4; NYNEX at 4-5; Saco at 3; Sagir at 3; Vanguard at 10-18.

¹⁶ NYNEX at 4-5.

is currently provided. No one has shown that expanding Equal Access to all cellular carriers would benefit the public.

A. Equal Access Need Not Be Imposed Because Cellular Subscribers Have the Ability to Easily Select an IXC of Choice

- 1. 800, 950, and 10XXX dialing plans provide cellular subscribers with the ability to select the IXC of their choice.**

Equal Access is wholly unnecessary because cellular subscribers have the ability to access the IXCs of their choice with one or more alternative dialing plans.¹⁷ Commenters agree with GTE's position that dialing plans such as 800 and 950 numbers and 10XXX codes provide end users with ample access to IXCs.¹⁸ Century Cellunet, Inc. ("Century") states that the premise that end users cannot access IXCs is "wholly erroneous" and that no cellular carrier, to Century's knowledge, blocks 800, 950, or calling card access to IXCs.¹⁹ AirTouch recognizes, as did GTE, that 10XXX access, as an alternative, "preserves subscriber choice without the costs and inefficiencies" of Equal Access.²⁰ IXCs, in their comments, did not demonstrate that there were any barriers to accessing their services through dialing plans.²¹ The

¹⁷ GTE at 6-9.

¹⁸ See, e.g., AirTouch at 7; Century at 7; CTIA at 10; Highland at 2; Miscelco at 8, n.13; SNET at 9; Vanguard at 8, n.22; Western at 3.

¹⁹ Century at 7.

²⁰ AirTouch at 7.

²¹ See, e.g., AT&T at 7, n.11.

closest MCI comes to making such a claim is by stating that 1+ dialing "facilitates" the delivery of IXC services, and that dialing plans do not provide the same "convenience" or "security" as Equal Access.²² Thus, the record demonstrates that Equal Access is wholly unnecessary because customers can currently access IXCs through one or more alternative dialing plans.

Further, speed dialing, which is standard on cellular telephones, facilitates the use of 800, 950, and 10XXX dialing plans.²³ Other cellular carriers concur with GTE, noting that speed dialing provides cellular customers with the ability to access IXCs as easily as 1+.²⁴

2. One plus dialing is currently widely available in the cellular marketplace.

One plus dialing, which is already widely available in the cellular marketplace, will become even more prevalent after the completion of the AT&T/McCaw merger. According to the Cellular Telecommunications Industry Association ("CTIA"), "approximately 95% of the population in the nation's 50 largest markets [currently] enjoys the option of choosing BOC-affiliated cellular service"²⁵ SWB calculates that

²² MCI at 8.

²³ GTE at 7-8.

²⁴ See AirTouch at 8; Century at 7; Vanguard at 8, n.22.

²⁵ CTIA at 10-11; see also ALLTEL at 6; Century at 11; SNET at 5.

approximately 294,494,000 POPs will be subject to Equal Access upon completion of the AT&T/McCaw merger.²⁶ If a subscriber views presubscription as an essential element of cellular service, that subscriber, in most markets, will be able to subscribe to a cellular carrier that provides Equal Access. Thus, the Commission need not impose Equal Access on independent cellular carriers.

B. Cellular Subscribers Do Not Value Equal Access

Many commenters filing on behalf of cellular carriers in this proceeding, including several RBOCs, agree that cellular subscribers are not demanding Equal Access.²⁷ ALLTEL Mobile Communications, Inc. ("ALLTEL") notes, as did GTE, that despite the fact that so many cellular customers currently have the ability to subscribe to a carrier that provides Equal Access, there has been no "migration" to these carriers.²⁸ SWB concurs,²⁹ quoting CTIA's findings that many carriers have never received "a single request for equal access" from end-users³⁰ which is GTE's experience as well.³¹

²⁶ SWB at 11; see also Comcast at 27.

²⁷ AirTouch at 4, 18; ALLTEL at 6; Americell at 4; Century at 10-11; Comcast at 27-28; CTIA at 11; Dakota at 4; First Cellular at 4; Florida at 2; Highland at 2; Miscellco at 8; Palmer at 7; Saco at 4; Sagir at 4; SWB at 31-32; Union at 2; Western at 3.

²⁸ ALLTEL at 6; see also Century at 11; NTCA at 6.

²⁹ SWB at 31-32.

³⁰ Id. at 32 (quoting Amicus Curiae Brief of CTIA in support of Generic Wireless Relief, CA No. 82-0192 (HHG) (D.D.C., August 8, 1994) at 21).

Southwestern Bell Mobile Systems, which as an RBOC-affiliated cellular carrier providing end users with Equal Access, conducted a survey of its customers, inquiring whether they would prefer to have long distance service provided "as it is currently" (i.e., through Equal Access) or provided through the cellular carrier.³² Seventy-two percent of SWB's customers surveyed--an overwhelming majority--preferred to have the cellular carrier provide them with long distance service. According to SWB, customer choice of long distance carrier ranked as the least important option in the survey; only 20% of surveyed customers preferred Equal Access.³³ SWB proffers further evidence that cellular subscribers have not demanded Equal Access. In a study conducted by Professor Jerry A. Hausman, only 48% of surveyed cellular resellers in the Los Angeles and San Francisco MTAs offered a choice of IXCs. Professor Hausman concludes that resellers located in markets with RBOC cellular carriers find that there is no need to provide Equal Access in order to compete effectively.³⁴

³¹ GTE at 15.

³² SWB at 32 (citing to Cellular Long Distance Concept, Bernard Englehard & Associates, Inc., August 1994, at 18, Tab 2).

³³ Id. at 33. The four options provided were large calling area; competitive local rates; 24-hour customer service; and the ability to choose a long distance company. Id. at 35.

³⁴ SWB at 33-34 (citing Affidavit of Professor Hausman at 18).

SWB's subscribers lack of enthusiasm for Equal Access is not an isolated phenomenon. Several other carriers have found that their customers have not demanded Equal Access.³⁵ For example, Century estimates that only "a handful" of its 200,000 customers have ever asked about Equal Access. No Century customer has asked for presubscription or switched to another cellular carrier because Century does not provide Equal Access.³⁶ ALLTEL is also unaware of any dissatisfaction among its customers with the way they access long distance service.³⁷ The evidence amply demonstrates that cellular end users do not want Equal Access.

C. The Cellular Marketplace Is Competitive Today

As part of its comments, GTE submitted a study by Charles River Associates which found that there is substantial competition in the cellular marketplace and a variety of barriers to collusion between the two carriers in any given market.³⁸ Again, there is significant consensus among

³⁵ AirTouch at 4, 18; ALLTEL at 6; Century at 10-11; Comcast at 27-28; Florida at 2; Highland at 2; Palmer at 7-8; Saco at 4; Union at 2; Western at 3. See also CTIA at 11.

³⁶ Century at 10-11.

³⁷ ALLTEL at 6.

³⁸ See Concentration, Competition, and Performance in the Mobile Telecommunications Services Market by Charles River Associates, attached to GTE's initial comments [hereinafter CR Study].

commenters that the cellular industry and the wireless market in general are dynamically competitive today.³⁹

McCaw Cellular Communications, Inc. ("McCaw"), like GTE, commissioned an economist to study competition in the cellular industry.⁴⁰ Bruce M. Owen, in his study submitted with the Comments of McCaw, determined that "no one has demonstrated that the presence today of only two cellular providers in each area has resulted in anticompetitive behavior"⁴¹ Based on a variety of factors, including a decline in the real price for cellular service and the introduction of technological and service-oriented innovations, Owen concluded that the cellular marketplace is competitive.⁴² Owen's conclusions on the competitive nature of the cellular marketplace mirror those of Charles River Associates.⁴³

Generally, commenters agreed with GTE and McCaw that the wireless marketplace is competitive today.⁴⁴ Bell Atlantic submits that the cellular industry is "vigorously

³⁹ See, e.g., AirTouch at 6, 7; ALLTEL at 7; AMTA at 5; AT&T at 8; Bell Atlantic at 9; Century at 14; CTIA at 9; Horizon at 2; NTCA at 4; NYNEX at 6; Owen Declaration at 4.

⁴⁰ See Owen Declaration, supra n.10.

⁴¹ Id. at 3.

⁴² Id. at 33.

⁴³ See CR Study at 9.

⁴⁴ See, e.g., AirTouch at 6, 7; ALLTEL at 7; Americell at 2; AMTA at 5; Bell Atlantic at 9; Century at 14; CTIA at 9; Dakota at 2; First Cellular at 2; Horizon at 2; Lake Huron at 2; Miscellco at 7; McCaw at 6; NTCA at 4; NYNEX at 6; Rural at 4-5; Sagir at 2.

competitive."⁴⁵ Century states that the tentative conclusion to impose Equal Access based on the exercise of market power "cannot be reconciled with the vigorous rivalry Century faces in each of its service areas from another licensee striving to gain market share by competing on price, coverage, service quality, and ancillary offerings."⁴⁶ NYNEX declares that market forces, rather than Equal Access, will ensure that customers can access IXCs.⁴⁷

A few commenters claim that the cellular market is not competitive.⁴⁸ Two of these commenters, Wiltel and LDDS, are IXCs, who obviously stand to benefit from mandated Equal Access; Equal Access would increase IXC traffic as formerly toll-free cellular traffic would be shifted to the IXCs.⁴⁹ Wiltel and LDDS rely on the Department of Justice's Memorandum ("Memorandum") filed with the MFJ court in opposition to a waiver request from certain RBOCs.⁵⁰ In addition, LDDS

⁴⁵ Bell Atlantic at 9.

⁴⁶ Century at 14.

⁴⁷ NYNEX at 5.

⁴⁸ See, e.g., LDDS at 4; NABER at iii; and Wiltel at 5. NABER makes its unsupported assertion in the negative, parenthetically excluding cellular carriers from the CMRS providers that lack market power.

⁴⁹ See GTE at 11, n.9.

⁵⁰ Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers, filed in United States v. Western Electric Co., Inc. et al., Civil Action No. 82-0192 (HHG) (July 25, 1994) [hereinafter Memorandum].

relies on a recent assessment of cellular competition completed by the California Public Utilities Commission ("CPUC").⁵¹

The Memorandum stated that "the market power of each cellular duopolist appears to be sufficient to permit supracompetitive pricing of cellular service."⁵² However, the Memorandum does not discuss any recent, extensive economic analysis to support the notion that independent cellular carriers do not compete vigorously for market share. Instead, the Memorandum principally relies on two arguments: first, that the duopoly nature of the cellular market ensures that cellular carriers have market power;⁵³ and second, that "[c]ellular systems 'can prevent their customers from reaching the interexchange carriers of their choice by programming their switches to send all long distance [calls] to one carrier.'"⁵⁴

The Memorandum does not demonstrate that the cellular market lacks competition. First, it is important to recognize that the Memorandum had as its primary focus the RBOCs' request for waiver of the MFJ. Second, while it is undeniable that cellular markets each contain two carriers,⁵⁵ "[b]lind

⁵¹ LDDS at 5.

⁵² Memorandum at 3 (emphasis added).

⁵³ See, e.g., id. at 12, 13.

⁵⁴ Id. at 19 (citation omitted).

⁵⁵ The Memorandum apparently does not credit the competitive pressures which resellers can present. See An Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz

reliance upon market share, divorced from commercial reality, [can] give a misleading picture of a firm's actual ability to control prices or exclude competition." Metro Mobile CTS, Inc., et al. v. NewVector Communications, Inc., et al., 892 F.2d 62, 63 (9th Cir. 1989). Third, the direct experience of independent cellular carriers is of markets permeated with competition. That substantial competition exists in the cellular market is also supported by the study of Charles River Associates and the Owen Declaration.

In the Commission's Memorandum Opinion and Order approving the AT&T/McCaw merger,⁵⁶ the Commission, in examining the cellular market, distinguished the local cellular market from the BOCs' wireline exchange market on the basis that cellular is: 1) relatively new; and 2) serves only a small percentage of the population.⁵⁷ Further, the Commission found that the cellular duopoly structure has created "a degree of rivalry not present in 'wireline' exchange services under the former Bell System, and competition from other wireless systems, such as PCS, is on

for Cellular Communications Systems (Report and Order), 86 F.C.C.2d 469, 511 (1981).

⁵⁶ Applications of Craig O. McCaw and American Telephone & Telegraph Company for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries (Memorandum Opinion and Order), File No. ENF-93-44, File No. 05288-CL-TC-1-93, et al. (FCC 94-238) (September 19, 1994) [hereinafter AT&T/McCaw Order].

⁵⁷ Id. at 24.

its way."⁵⁸ Thus, both the Commission's most recent review of the cellular market and the record in this proceeding contradict the Memorandum.

The Memorandum also incorrectly concludes that cellular systems have the ability to foreclose their subscribers from accessing an IXC of their choice. To the contrary, as discussed in Part II, Section A, Subsection 1 supra, cellular subscribers have the ability today to access the IXC of their choice through one or more alternative dialing plans. Currently, 1+ dialing is widely available and over 294,000,000 POPS will have access to 1+ dialing within a short time after the AT&T/McCaw merger. Thus, subscriber choice of IXC is not, and cannot be, foreclosed by cellular carriers.

LDDS's reliance on the CPUC's analysis of cellular competition is also misplaced. As GTE argued in another proceeding before the Commission,⁵⁹ the CPUC did not present any convincing evidence of a lack of competition in the cellular marketplace.⁶⁰ In addition to using incorrect data

⁵⁸ Id. at 24-25 (citations omitted).

⁵⁹ See Comment of GTE Service Corporation filed in Petition of the People of the State of California and the Public Utilities Commission of the State of California Requesting Authority to Regulate Rates Associated with the Provision of Cellular Service within the State of California, PR File No. 94-SP3, DA-94-876 (September 19, 1994) [hereinafter GTE CPUC Comment].

⁶⁰ Id. at 13-14. For example, the CPUC's rate of return analysis was not credible. Id. at 18. The CPUC's reliance on operating rates of return was misguided, as was its Q-ratio analysis. Id. at 20-24, 27.

in an improper manner, the CPUC used an unreasonably narrow market definition by limiting its examination to cellular carriers only,⁶¹ overlooking the more than 1,400 SMR providers and 75 cellular resellers authorized to provide service in California.⁶² While the CPUC contended that cellular prices had risen,⁶³ GTE's rates had, in real terms, dropped by an average of 22%.⁶⁴ Thus, the economic analysis contained in the CPUC's Petition yielded incorrect results upon which the Commission should not rely.

Notably, AT&T concurs with many cellular carriers that competition exists in the cellular marketplace. AT&T notes that "the Commission's tentative conclusion that equal access obligations should be imposed on cellular carriers . . . is based on perceived competitive differences between cellular services and other CMRS. The [NPRM/NOI] recognizes . . . that this perception is based on an incomplete record, and AT&T does not believe that this perception is correct."⁶⁵ Also, the Commission determined in a previous CMRS proceeding that the cellular marketplace was sufficiently competitive to

⁶¹ Id. at 37-41.

⁶² Id. at 17. Owen was far more critical of the CPUC's arguments, characterizing various CPUC assertions as "mak[ing] no economic sense," Owen Declaration at 24, and being "nonsense," id. at 27.

⁶³ GTE CPUC Comment at 28.

⁶⁴ Id. at 31.

⁶⁵ AT&T at 8 (citations omitted).

warrant forbearance.⁶⁶ The record now before the Commission firmly establishes that the cellular marketplace is robustly competitive.

D. The Wireless Marketplace Will Become Even More Competitive as Wide-Area SMR and PCS Providers Emerge

GTE's prediction that wide-area SMR providers and PCS carriers will soon stimulate competition in the wireless marketplace to even greater heights is echoed by numerous commenters.⁶⁷ This point is virtually indisputable, as potentially up to eight or nine carriers are expected to compete for subscribers in every market throughout the United States. However, the tentative conclusion of the NPRM/NOI failed to take this important factor into account.⁶⁸ Significantly, the Commission recently evaluated the competitive impact of PCS and wide-area SMR, and found that these wireless providers would increase competition; the

⁶⁶ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (Second Report and Order), 9 F.C.C. Rcd 1411, 1478 (1994)[hereinafter CMRS Second Report and Order].

⁶⁷ GTE at 27; see also AirTouch at 5, 7; ALLTEL at 6; AT&T at 8; Americell at 2; Century at 14; Comments of Columbia PCS, Inc. ("Columbia") at 3-4; Comcast at 25-26; CTIA at 11; Dakota at 2; First Cellular at 2; Horizon at 2; Lake Huron at 2; McCaw at 7; New Par at 4-5; NTCA at 4; NYNEX at 5; OneComm at 5, 9; Owen Declaration at 3; Palmer at 8; Sagir at 2; SNET at 11; SWB at 14-15, 21, 22; TDS at 10; Triad at 4; Vanguard at 7-8.

⁶⁸ GTE at 2-3; see also Comcast at 25; SNET at 11.